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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Periodic Reporting (Proposal Eight	)	Docket No. RM2017-12

COMMENTS OF THE
AMERICAN CATALOG MAILERS ASSOCIATION (ACMA)

(September 18, 2017)

In a petition filed July 31, 2017 ("Petition"),[1] the Postal Service proposed to change the way the 60-percent provision of section 3626(a)(6) is applied. In Order No. 4025 (August 2, 2017), to consider the proposal, the Commission established the instant docket and allowed comments no later than September 18, 2017. For the reasons explained herein, ACMA supports the change.

In the Marketing Mail class,[2] based on applicable billing determinants, the rates for Nonprofit mail have been set under the PAEA so that the average revenue per piece

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Eight), July 31, 2017.

[2] The full name of the class is USPS Marketing Mail, shortened herein to Marketing Mail. Formerly it was designated Standard Mail, and before that third-class. The name changes were not occasioned by fundamental changes in the contents of the class.

of all the Nonprofit categories combined is, as nearly as practicable, 60 percent of the average revenue per piece of all the Commercial categories combined. That is, the 60-percent provision of Public Law 106-384, codified in section 3626(a)(6) and unchanged by the PAEA, has been applied at the level of the class.[3] In its Petition, the Postal Service proposes to apply it instead at the level of the categories designated as subclasses at the time the law was passed, to which the law specifically points. These subclasses are the Regular[4] subclass (containing all non-ECR mail) and the ECR subclass (containing Carrier Route, High Density, High Density Plus, Saturation, and Every Door Direct Mail – Retail). Although these subclasses have not received the same attention under the PAEA as before, their identity remains understood and data for them are just as available.

Background

The Postal Reorganization Act of 1970 ("PRA")[5] did not speak of subclasses. Except for phasing provisions, it required that Nonprofit rates in then-third-class (referred to as "mail under former sections … 4452 (b) and (c)") be set at cost, and it authorized appropriations to compensate for the absence of a markup. In Commission proceedings, the notion of subclasses unfolded as useful in ratesetting and the Nonprofit and Commercial categories were so designated. Over time, Congress made

[3] The 60-percent provision of Public Law 106-384, October 27, 2000, entitled "Reduced Rate Mail Modification Provisions," modified RFRA, as discussed further in the text. The law was not given a short title.

[4] The term "Regular" has sometimes been used to refer to Commercial as distinct from Nonprofit and sometimes to include ECR as well as non-ECR. Here it includes Commercial and Nonprofit but excludes ECR. Both Regular and ECR include letters, flats, and parcels.

[5] Public Law 91-375, August 12, 1970.

several changes that were crafted to reduce the appropriations. In each case, the Nonprofit rates were increased to align with the appropriation reduction.[6]

In 1993, the Revenue Forgone Reform Act ("RFRA")[7] withdrew the appropriations entirely and specified that, after six steps, the markup over cost on the Nonprofit subclass would be one-half the markup on the Commercial subclass. In Dockets No. MC95-1 (reclassifying Commercial rates) and MC96-2 (reclassifying Nonprofit rates), these two subclasses were divided into four subclasses: Nonprofit Regular, Nonprofit ECR, Commercial Regular, and Commercial ECR. When the one-half markup provision of RFRA was applied separately to the two Nonprofit subclasses in MC96-2, almost all of the Nonprofit categories saw significant rate declines.[8]

Continuing under the RFRA requirements, Docket No. R97-1 resulted in a 9.6 percent *increase* for Nonprofit Regular and another *decrease* (10.6 percent) for Nonprofit ECR. *Id*. While the filing that became Docket No. 2000-1 was being prepared, it was known that Congress was considering Public Law 103-384, entitled "Reduced Rate Mail Modification Provisions." This law was passed on October 27, 2000, during the pendency of R2000-1. Presuming passage, the Postal Service proposed a 5.6 percent increase for Nonprofit Regular and a 14.8 percent increase

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[6] In a few cases, the *reauthorization* of appropriations allowed Nonprofit rates to be decreased.

[7] Public Law 103-123, October 28, 1993. RFRA is normally treated as an acronym and pronounced "riff-r**ă**."

[8] *See* Direct Testimony of Joseph D. Moeller, USPS-T-35, Docket No. R2000-1, at 30.

for Nonprofit ECR.[9] Under RFRA, both of these increases would have been significantly higher.

Dockets No. R2000-1, R2001-1, R2005-1, and R2006-1 all followed the modification to RFRA, Public law 106-384. Pressed by nonprofit groups in Docket No. R2006-1, the Commission said: "Public Law 106-384 requires nonprofit rates to be set in relation to their commercial counterparts regardless of nonprofits' independent costs. The Commission can not ignore that law and depress rates simply to facilitate fundraising …." Op. and RD at 288.

When Congress was drafting Public Law 103-384, it was looking at the outcome of Docket No. R97-1, which showed separate costs and cost coverages for Nonprofit Regular and Nonprofit ECR. The final draft of the law framed a 60-percent modification that applied separately to the two Nonprofit subclasses. Not only is the language clear on this point, but the development backs it up; that is, Nonprofit Regular was already at 60 percent, approximately, and the outcome was acceptable. All the law did was apply the same proportion to Nonprofit ECR, which significantly reduced its rate increase.

The amendment to RFRA may be looked at as a form of cost-based rates for Nonprofit. In Docket No. R97-1, the cost coverage of Nonprofit Regular was

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[9] *Id*. at 2. The average increase for all mail was 6.4 percent.

The path through time for Nonprofit ECR is interesting. Consider the undiscounted basic rate. It became 12.8 cents per piece on October 1, 1995, due to a phasing increase. On October 6, 1996, as a result of the Reclassification effort that created four subclasses, it declined to 10.7 cents per piece. On January 10, 1999, as a result of Docket No. R97-1, it declined to 9.9 cents per piece. On July 1, 2001, as a result of Docket No. R2000-1, it became 11.8 cents per piece, still a full penny less than before Reclassification. It is apparent that creating the four subclasses benefitted Nonprofit ECR significantly.

113.7 percent and its per-piece revenue was approximately 60 percent of the per-piece revenue of Commercial Regular.[10] Congress considered this to be suitable consideration, and locked it in. It then gave the same proportion to Nonprofit ECR. If Nonprofit Regular and Nonprofit ECR had not been designated as separate subclasses in Docket No MC96-2, the base for the proportion would not have been available.

The specifics of the new law, now comprising section 3626(a)(6), should be noted. Subparagraph (A) states:

> (A) The estimated average revenue per piece to be received by the Postal Service from each subclass of mail under former sections 4452 (b) and (c) of this title shall be equal, as nearly as practicable, to 60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail.

Congress was looking at the two subclasses when it crafted the new law, and it referred to them as "each subclass." Subparagraph (B), however, goes further. It says:

> (B) For purposes of subparagraph (A), the estimated average revenue per piece of **each** regular-rate subclass shall be calculated on the basis of **expected volumes and mix of mail for each subclass** at current rates in the test year of the proceeding. [Emphasis added.]

Congress thus added a second subparagraph to make it clear that the 60-percent relationship is not to be affected by changes in the "mix of mail for each subclass."[11]

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[10] These figures and related statistics may be found in, or calculated easily from, summary data on the first page of App. G in Vol. 2 of the Op. and RDs of Dockets No. R97-1 and R2000-1.

[11] The mix of mail is not an arcane concept. Changes in it have been a matter of considerable attention and effect for most of postal history. For example, the proportion of parcels has varied substantially, the proportion of mail entered in a destination facility changed in a major way after Docket No. R90-1, and the growth of mail presorted to the carrier route has outpaced the growth of many other categories.

The Postal Service Proposal

The Postal Service "proposes to return to its pre-PAEA convention of applying the [60-percent] rule at the former Domestic Mail Classification Schedule 'subclass' level, i.e., to … Regular and … [ECR] … separately." Petition at 1, fn. omitted. It points out that section 3626(a)(6) requires application at the subclass level and explains in some detail that mix effects have prevented a result that is consistent with this requirement. As we noted above, Congress included a separate subparagraph for the obvious purpose of preventing mix effects from being a cause of failing to realize 60 percent at the subclass level.

The decision in the first rate adjustment under the PAEA to apply the 60-percent rule at the class level was explained in one sentence as based on an observation that subclasses were no longer "explicitly defined in the Mail Classification Schedule." Petition at 2, fn. "See Docket No. R2008-1, *United States Postal Service Notice of Market-Dominant Price Adjustment*, February 11, 2008, at 24." We have found no evidence that the second subparagraph of section 3626(a)(6) and the potential effects of mix were considered, which are now causing difficulty. Since section 3626(a)(6)(A) requires focus on the subclasses, and since information on the subclasses is just as available now as it was then, we view the statute as requiring the application proposed by the Postal Service.

One other matter is at issue here. The argument that subclasses no longer exist, meaning apparently that they do not play the central role in rate development that evolved in Commission proceedings under the PRA, suggests that in assessing rates and rate relationships the Commission is somehow constrained to look only at categories and associated information that *do* play such a role. We do not see the

Commission as so constrained. Rather, it may look at any information it deems relevant, particularly in a case like this where the law specifies certain categories—subclasses, and information for those categories is available. The subclasses are still meaningful aggregations.

Flexibility and Constraints under the PAEA

The PAEA presents both constraints and flexibility for the Postal Service. The price cap is to be applied at the level of the class, even though applying it at the level of all market-dominant categories combined would give the Postal Service more flexibility. The constraint on rate differences between categories designated as matters of worksharing limits the Service's freedom to increase discounts.

A similar situation exists with the 60-percent rule. Applying the rule at the level of the class gives the Postal Service freedom to move Nonprofit rates in multitudinous directions, so long as an end result returns to a 60-percent proportion for the class. Applying the proportion at the subclass level still provides freedom, but not as much. We see this as PAEA consistent. And since the focus on subclasses is still in the law and was not changed by the PAEA, we see this constraint as required by it.

Respectfully submitted,

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